

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GRAMMATIKI E. TSATSANI,

Plaintiff,

-v-

WALMART, INC., and JOSHUA STRUDL,

Defendants.

19 Civ. 9063 (PAE) (BCM)

OPINION &
ORDER

PAUL A. ENGELMAYER, District Judge:

Currently pending is a motion to dismiss *pro se* plaintiff Grammatiki E. Tsatsani's complaint, which brings claims under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"), the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.* ("FMLA"), and New Jersey and New York state law. Defendants Walmart, Inc. ("Walmart"), Tsatsani's former employer, and Joshua Strudl, a Walmart store manager, have moved to dismiss each of Tsatsani's claims against them for failure to state a claim. Dkts. 13–15. Before the Court is the October 26, 2020 Report and Recommendation of the Hon. Barbara C. Moses, United States Magistrate Judge, recommending that the Court grant the motion and dismiss Tsatsani's claims as untimely and for failing to plausibly allege a violation of any applicable law. Dkt. 29 ("Report").

The Court incorporates by reference the exceptionally thorough summary of the facts provided in the Report. For the following reasons, the Court adopts its recommendation in full and dismisses Tsatsani's claims with prejudice.

DISCUSSION

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. UPS*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Moses’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. That includes its recommendation that dismissal of Tsatsani’s claims should be with prejudice and without leave to amend, notwithstanding Tsatsani’s *pro se* status, given the untimeliness of her claims and her prior opportunity to effectively amend her complaint. Report at 42–43.

Because the Report explicitly states that “[t]he parties shall have 14 days from this date to file written objections to this Report and Recommendation,” and that “[f]ailure to file timely objections will result in a waiver of such objections and will preclude appellate review,” Report at 43, the parties’ failure to object operates as a waiver of appellate review. *See, e.g., Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Hum. Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).


CONCLUSION

For the foregoing reasons, the Court grants defendants' motion to dismiss in its entirety, and dismisses this action with prejudice.

The Clerk of Court is respectfully directed to terminate the motion pending at docket 13 and to close this case.

The Court also respectfully directs the Clerk to mail a copy of this decision to plaintiff.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: November 13, 2020
New York, New York